

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company (U902E) and Caruso Acquisition Co. II, LLC for an Order Authorizing the Sale of Property Pursuant to Public Utilities Code Section 851.

Application 13-02-017
(Filed February 28, 2013)

DECISION AUTHORIZING SAN DIEGO GAS & ELECTRIC COMPANY'S SALE OF PROPERTY TO CARUSO ACQUISITION CO. II, LLC**1. Summary**

This decision authorizes San Diego Gas & Electric Company (SDG&E) to sell to Caruso Acquisition Co. II, LLC, (Caruso) approximately 48.78 acres of land and, subject to the buyer's exercise of purchase option rights, up to approximately 159.79 acres of adjacent land located in Carlsbad in San Diego County, along with related intangible personal property. SDG&E shall submit a compliance advice letter within 45 days following the closing calculating and allocating the gain on the transferred property in accordance with this decision.

This proceeding is closed.

2. Background

By this unopposed application, SDG&E seeks authority to sell to Caruso a 48.78 acre parcel of land (the Sale Parcel) and, subject to the buyer's exercise of purchase option rights, up to approximately 159.79 acres of adjacent land (the Option Parcel), located in the City of Carlsbad (City) in San Diego County, along with intangible personal property associated with the land including any

assignable governmental entitlements, permits, approvals and licenses related to the land.

The Sale Parcel is subject to various water utility and roadway easements. Portions of the Sale Parcel and Option Parcel are subject to a deed restriction by the California Coastal Commission disallowing development, portions of both parcels are currently used in agricultural operations by a third-party licensee, portions of both parcels are leased to the City for purposes of public access from the adjacent waters, and a portion of the Option Parcel is leased to the City for public park purposes (although the City has not improved the parkland leasehold and it remains vacant). Pursuant to City ordinances, land use on the Option Parcel is restricted to certain open space and agricultural uses (other than utility uses subject to the Commission's jurisdiction). An underground gas pipeline and overhead electric transmission and distribution lines owned by SDG&E traverse both parcels and, except for access required for the operation and maintenance of the utility facilities, the parcels are not otherwise used by SDG&E and SDG&E has no planned use for them.

Caruso is acquiring the Sale Parcel and, potentially, all or a portion of the Option Parcel with the intention to develop one or more commercial retail, entertainment, residential and/or hospitality projects, with specific locations to be determined after Caruso engages in a community outreach effort to garner community input.

In exchange for the sale of the Sale Parcel, Caruso will pay SDG&E the fair market value as will be determined based, in part, on a property appraisal that will be obtained by the parties after Caruso has submitted specific development plans to the appropriate planning agencies and obtained the entitlements that are required to proceed with the development; in no event shall the purchase price

be less than an agreed upon amount that is greater than the estimated book value of the property. In exchange for the sale of some or all of the Option Parcel, Caruso will pay SDG&E the fair market value as determined by appraisal of the specific acreage that will be sold. SDG&E will retain suitable easements over and under the land for utility purposes, which will enable it to continue to operate and maintain the utility facilities within those easements..

3. CEQA Compliance

The proposed sale is not a “project” for which environmental review is required under the California Environmental Quality Act (CEQA). “CEQA’s conception of a project is broad” and “agency action approving or opening the way for a future development can be part of a project and can trigger CEQA even if the action takes place prior to planning or approval of all the specific features of the planned development.” (*Friends of the Sierra Railroad v. Tuolumne Park and Recreation District* (2007) 147 Cal.App.4th 643, 653- 654.) Nevertheless, although the proposed transfer clearly portends the possibility of future environmental impacts, it is not a “project” because Caruso does not have development plans at this time that would enable us to undertake a meaningful environmental review. (147 Cal.App.4th at 651.)

4. Public Interest

The primary question for the Commission in applications for authority to transfer property pursuant to Section 851 is whether the proposed transaction is "adverse to the public interest." (*Universal Marine Corporation*, 14 CPUC 2d 644, 646 (1984).) Where no such harm will result, the Commission has authorized leases, licenses, and other legal rights in real property, recognizing that the public interest is best served where utility property is used for other productive purposes. (Decision (D.) 04-07-023 at 13, citing D.02-01-058 and other decisions.)

Here, SDG&E does not use the property other than for operating and maintaining the underground gas pipeline and overhead electric transmission and distribution lines that are located on it, and will retain suitable easements to enable it to continue to do so. Accordingly, the proposed transfer will not interfere with SDG&E's operations or affect service to its customers, or otherwise adversely impact the public interest.

5. Allocation of Gain on Sale

Ordinarily, 67% of the gain on sale of non-depreciable property, other than electric transmission property, shall be allocated to utility ratepayers and the remaining 33% to shareholders. (D.06-05-041, Ordering Paragraph (OP) 1, as modified by D.06-12-043 at 21.) However, where the property has been held in and out of rate base over time and absent evidence that most of the property's appreciation (or depreciation) occurred while the property was in (or out of) rate base, only the portion of the gain that is attributable to the period of time when the property was in rate base is subject to this percentage allocation rule, and the portion of the gain that is attributable to the period of time when the property was held outside of rate base is allocated entirely to shareholders.

(D.06-05-041, OP 14.) Gain on sale of electric transmission property is allocated according to the rules of the Federal Energy Regulatory Commission (FERC).

(D.06-05-041, OP 13.)

The Sale Parcel is comprised of assets that are now held in FERC electric transmission property accounts that were included in rate base until January 1, 1998, as well as assets that were in rate base until they were re-categorized as Non-Utility Land on June 1, 1988. The Option Parcel is similarly comprised of assets that were previously in rate base and are now held in FERC electric transmission property accounts or Non-Utility Land accounts. Accordingly, the

allocation of the gain on sale should be made pursuant to the methodologies described in Ordering Paragraphs 13 and 14 of D.06-05-041.

As discussed above, the actual purchase prices for the Sale Parcel and Option Parcel will be determined upon appraisal of the property after Caruso has submitted specific development plans to the appropriate planning agencies and obtained the entitlements that are required to proceed with the development and after Caruso exercises its option to purchase some or all of the Option Parcel. For these reasons, it is not possible to calculate and allocate the gain on sale until after closing. Consistent with the procedures followed in other instances where the amount of gain was unsettled, we direct SDG&E to submit a compliance advice letter within 45 days following the closing providing the final calculation and allocation of gain with supporting data. (See, e.g., D.07-03-037 and D.02-12-020.)

6. Motion to File under Seal

By motion filed concurrently with the application, SDG&E and Caruso move for leave to file an unredacted version of the application under seal. As amended on April 15, 2013, the redacted information consists of the estimated sale price and certain factors affecting the determination of the final sale price, the estimated closing date, the Purchase and Sale Agreement (Exhibit A), and illustrative gain on sale calculations (Exhibit C). This information could enable a competitor to disrupt or otherwise interfere with the acquisition and otherwise subject Caruso to unfair competitive disadvantage. The motion is granted.

7. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code

and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

8. Categorization and Need for Hearings

In Resolution ALJ 176-3311 dated March 21, 2013 the Commission preliminary categorized this application as ratesetting and preliminary determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

9. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Hallie Yacknin is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The proposed transfer will not interfere with SDG&E's operations or affect service to its customers, or otherwise adversely impact the public interest.
2. The Sale Parcel is comprised of assets that are now held in FERC electric transmission property accounts that were included in rate base until January 1, 1998, as well as assets that were in rate base until they were re-categorized as Non-Utility Land on June 1, 1988. The Option Parcel is similarly comprised of assets that were previously in rate base and are now held in FERC electric transmission property accounts or Non-Utility Land accounts.
3. It is not possible to calculate and allocate the gain on sale until after closing.

Conclusions of Law

1. The proposed sale is not a "project" for which environmental review is required under CEQA.
2. The proposed sale should be approved.

3. The allocation of the gain on sale should be made pursuant to the methodologies described in Ordering Paragraphs 13 and 14 of D.06-05-041.
4. SDG&E should submit a compliance advice letter within 45 days following the closing providing the final calculation and allocation of gain with supporting data.
5. The motion to file the unredacted application under seal should be granted.
6. Application 13-02-017 should be closed.
7. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. San Diego Gas & Electric Company is authorized to sell property located in Carlsbad, San Diego County, on the terms and conditions specified in the Purchase and Sale Agreement between San Diego Gas & Electric Company and Caruso Acquisition Co. II, LLC dated July 31, 2012.
2. San Diego Gas & Electric Company shall submit a compliance advice letter within 45 days following the closing of the Purchase and Sale Agreement with Caruso Acquisition Co. II, LLC providing the final calculation and allocation of gain on sale pursuant to the methodologies described in Ordering Paragraphs 13 and 14 of Decision 06-05-041, with supporting data.
3. The motion to file the unredacted application under seal is granted.
4. Application 13-02-017 is closed.

This order is effective today.

Dated _____, at San Francisco, California.